IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 26TH OCTOBER 2007 / 4TH KARTHIKA 1929

Crl.Rev.Pet.No. 3829 of 2007()

CRA.259/2004 of ADDL.SESSIONS COURT, N.PARAVUR
CC.490/2000 of JUDL.MAGISTRATE OF FIRST CLASS, PARAVUR

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REVN. PETITIONER:

VARGHESE M.V.
AGED 50 YEARS, S/O.MENACHERY VARGHESE
MENACHERY HOUSE, VAZHIKULANGARA
N.PARAVOOR(NOW RESIDING AT SURYA VILAS,
1ST FLOOR, BEHIND RAJAGIRI SCHOOL
S.KALAMASSERY)

BY ADV. SRI.K.A.MANZOOR ALI

RESPONDENTS:

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1. K.P.GEORGE,
S/O.PAILY, KIZHAKKAMPURAM DESOM
CHENDAMANGALAM VILLAGE,
PARAVUR TALUK,
PIN 682776

2. STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTRO,
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 26/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3829 OF 2007

Dated this the 26th day of October, 2007

O R D E R

In this revision filed under Section 397 read with Section 401 Cr.P.C. the petitioner who was the accused in C.C. No.490/2000 on the file of the J.F.C.M., North Paravur challenges the conviction entered and the sentence passed against him for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the revision petitioner re-iterated the contentions in support of the revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the revision petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel for the revision petitioner submitted

that the testimony of DWs 1 and 2 would go to show that Ext.P1 cheque was not issued in discharge of a debit or liability and that it was actually the complainant who was borrowing a sum of Rs.1,00,000/- through the said transaction.

5. Both the courts below have disbelieved DWs 1 and 2 who did not have a consistent version regarding the defence story as per which the cheque was issued by the accused as a loan to the complainant. DW2 who claimed to have seen the accused issuing the cheque from his Vazhikulangara property on 20.1.2000 was disbelieved for the reason that on 27.10.1999 the accused had disposed the said property and had put the property in the possession of the vendee and, therefore, he could not have handed over the cheque to the complainant on 20.1.2000. Moreover, the accused did not mount the witness box to give evidence in support of the defence version. The conviction was recorded by the courts below after a careful re-appraisal of the oral and documentary evidence in the case.

6. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

7. What now survives for consideration is the question as to

whether a proper sentence has been imposed on the revision petitioner. I am, however, inclined to modify the sentence in the light of the recent pronouncement by the Supreme Court that no default sentence can be imposed for an order for compensation under Section 357(3) Cr.P.C. Accordingly, the sentence imposed by the courts below on the revision petitioner is set aside and instead he is sentenced to pay a fine of Rs.50,000/- (Rupees fifty thousand only) within three months from today, failing which he shall suffer simple imprisonment for three months by way of default sentence. As and when the fine amount is deposited, the same shall be paid to the 1st respondent complainant by way of compensation under Section 357(1) Cr.P.C.

This revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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